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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,804	03/12/2004	Robert Guadagna	1298-2	8297

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EXAMINER

COLLINS, TIMOTHY D

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,804

Applicant(s)

GUADAGNA, ROBERT

Examiner

Timothy D. Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 10 and 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-9, 11-13 and 17 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

1. Applicant's election of Group II in the reply filed on July 11, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). However it also appeared that the applicant did not choose from the further combination and subcombination or the species all posed in the examiners restriction of 6/17/05. However during a telephone conversation with Peter Dilworth on 8/4/05 a provisional election was made without traverse to prosecute the invention of III, claims 4-17 and also the Species A which is readable on claim 9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-3 and 10 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 7 the terms "outwardly" and "inwardly" render the claim indefinite because there is no common frame of

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reference with which to determine exactly what the applicant intends to claim. It is clear that the inner side (root) is toward the body of the craft and the outer side (tip) is the unattached end of the wing, however these conventions do not seem to hold for the “outwardly” and “inwardly” curved regions. Clarification is needed. Because of the above, the claims have been treated as requiring a curved region near the inner and outer sides.

4. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “airfoil” in claim 17 is used by the claim to mean “that the wing thickness reduces from leading edge to trailing edge”, while the accepted meaning is “that the thickness increases from leading edge to a point of maximum thickness and then reduces to the trailing edge.” The term is indefinite because the specification does not clearly redefine the term. Also the applicant’s figures do not show this feature.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the airfoil cross section of the wings corresponding to the claimed wing must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note the figure shows the conventional teaching of increasing from leading edge to a maximum then decreasing to the trailing edge.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 4,6,7,8,9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 2442417 to Lang (hereinafter called 417).

b. Re claim 4, 417 discloses an animal scaring device (the device will inherently scare animals if it moves over their heads) configured to have a shape of a predatory bird (as can be seen in the figure 1, the device is in the shape of a predatory bird). The device having a body (about 27) and a pair of wings (33 and 34 on figure 1) each of the wings having a ratio of max width to length of between “about .4-.6”, as seen in figure 1 at least. Note the term “about” is relative.

c. Re claim 6, 417 discloses that the wings have inner side widths (the root where it meets the number 27 approximately) and outer sides (the tip where it is seen as being at the extreme right and left sides of the device. The ratio of inner and outer side ranges between “about” .7-1 as seen in the figure 1. Note the term “about” is relative.

d. Re claim 7, 417 discloses at least in figure 2 that there are inner and outer curved regions near the 45 and 46 on the trailing edge and also

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that there are leading and trailing edges as seen in figure 2 near the 43 and 44 (leading edges) and near the 45 and 46 (trailing edges). Note: these locations show at least small curved regions (or bumps) near the 29 and 30, and large ones near the 17 and 18 as well as near the 41 and 42 on the trailing edge.

e. Re claim 8, 417 discloses at least in figure 2 that the leading edge has a curved region near the 43 and 44 and that that region is flanked by two side regions, the inner and outer sides which are seen at about the center of the craft and the outer edges of the wings of the craft. Note: these locations show at least some curves to the right and left of the numbers 43 and 44, the curves are opposites so there are "inwardly" and "outwardly" curved regions on the central region.

f. Re claim 9, 417 discloses at least in figure 2 near the numbers 52 and 51 that there are curves with greater than the radius of curvature of the ones on the central region.

g. Re claim 11, 417 discloses that the wings have frames that are formed of a plurality of detachable components (as seen in figure 3, in that the pieces can come apart), also this same figure shows through the same parts that there are a "plurality of sections" formed as one piece, in that the sections are detachable components. As can be seen in the figure 3, the rods which hold the craft together have seams that may be detached. Also as seen in column 2 in lines 40-50 sockets can be seen which allow

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for disassembly. Also as seen in figure 5, rods 19 and 20 are fit into holes, therefore being removable.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over 417 as applied above to claims 4,6,7,8,9 and 11 and further in view of USPN 4228977 to Tanaka (hereinafter called 977).

a. Re claim 5, 417 does not disclose that the pair of wings are detachably coupled to the body, however 977 teaches of the wings being coupled to the body detachably. This is done for the purpose of ease of assembly as taught by 977 in column 1 at lines 45-48. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of 977 into the device of 417 so as to easily assemble and disassemble the device as taught by 977 in lines 45-48 of column 1.

b. Re claim 12, 417 discloses a head and tail portion as seen in figures 2 and 3 in numbers 22 and 28. However 417 does not disclose a hollow frame coupled to these. But 977 does teach of a head and tail portion coupled to a hollow frame as seen in figures 2 and 3 at numbers

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11 and 13 and the hollow frame in number 20 approximately. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of hollow bodies of 977 into the device of 417 so as to make the device look more like a bird, in this case a sea-gull as can be seen in column 2 at lines 20-28.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over 417 as applied to claims 4,6,7,8,9 and 11 above, and further in view of USPN 6241191 to Coronado (hereinafter called 191).

a. Re claim 13, 417 does not disclose that the device is coupled to a manually operated reel by a centerline, however 191 does teach of a manually operated reel as seen in the figure attached to a kite by a centerline. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of a reel and centerline from 191 into the device of 417 so as to easily wind and unwind multiple kite lines as taught by 191 at least in column 2 at lines 17-21.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over 417 as applied to claims 4,6,7,8,9 and 11.

b. Re claim 17, 417 does not disclose that the wings have an airfoil cross-section however the examiner takes official notice that it is old and well known in the art that flying vehicles and craft may have airfoil cross section wings for the purpose of increasing lift and efficiency. Therefore it would have been obvious to one of ordinary skill in the art to have applied

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the teachings of airfoil cross-sections into the device of 417 so as to increase lift efficiency.

Allowable Subject Matter

12. Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record all failed to show either alone and/or in combination a reel device with central hub and angularly spaced pins with free ends and endless sides attached to the free ends of the pins.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses kites and flying craft.

a. USPN 2388478

b. USPN 1629442


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D. Collins whose telephone number is 571-272-6886. The examiner can normally be reached on M-F, 7:00-3:00, with every other Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Timothy D. Collins
Patent Examiner
Art Unit 3643